IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 2594 of 1996

Between:

Sheik Abdul Rahman, S/o. Sheik Dawood
Saheb, R/o. Dabbakupalli(V), Vatsavai
Mandal, Krishna District-521 402.

..... PETITIONER

AND

1. The Mandal Revenue Officer-cum-Mandal
Executive Magistrate, Vatsavai village and

Mandal, Krishna District.

2. Dabbakupalli Gram Panchayat, rep. by it's Sarpanch,
Dabbakupalli,Vatsavai Mandal, Krishna Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction, more particularly one in the nature of Mandamus declaring the impugned Closure Notice of the first respondent-Mandal Revenue Officer, Vatsavai Mandal, Krishna District, dt.6.2.1996 as illegal, without jurisdiction and violative of the provisions of A.P. Grampanchayat Act and of Art .14 of the Constitution of India.

For the Petitioner: MR.V.T.M.PRASAD, Advocate.

For Respondent No.1: GP FOR REVENUE

For Respondent No.2: (Not present)

The Court made the following:

ORDER:

This writ petition is filed questioning the impugned notice, dated 06-02-1996 issued by the first respondent-Mandal Revenue Officer, Vatsavai Mandal, Krishna District, directing the petitioner herein to close down his Chilli and Flour Mill at Dabbakupalli village, as illegal and violative of the provisions of A.P. Grampanchayat Act.

The petitioner states that he started a flour mill in Dabbakupalli village in the name and style of "Chotima Chillies and Flour Mill", in the year 1989, after obtaining all the requisite technical sanctions and permission from the Inspector of Factories, Medical Officer, Regional Officer of Director of Town Planning, second respondent Gram Panchayat, and 'No objection Certificate' from his neighbours. He also states that licence has been renewed every year by the Gram Panchayat. He alleges that on the instigation of his political opponents, some of the villagers gave a petition in the 'Prajala Vaddaku Palana Sadassu' held in the village on 11-12-1995, complaining that the mill is harmful to their health, and in pursuance thereof, the first respondent, without conducting any enquiry and without giving any notice to him, issued the impugned notice directing him to close down the mill forthwith. The petitioner states that the first respondent has no jurisdiction to issue such a notice, and the subject of granting permission to run the mill, vests with the Gram Panchayat as provided in Sections 124 and 125 of the A.P. Gram Panchayats Act, 1964. Assailing the impugned notice of the first respondent, the petitioner filed the present writ petition.

Denying the allegations of the petitioner, the first respondent filed counter-affidavit. It is stated that the Inspector of Factories and District Medical and Health Officer, Krishna have issued approval orders for the mill subject to the conditions as mentioned in their respective orders. The second respondent-Gram Panchayat though approved for establishment of the mill by its resolution No.54, dated 31-01-

1989, subsequently cancelled the same by its resolution No.63, dated 07-12-1990 and directed the petitioner to obtain technical sanction. It is also stated that the Gram Panchayat has not granted licence till today, and the petitioner failed to produce any order of licence said to have been issued by the Gram Panchayat. The first respondent states that since the petitioner has violated the conditions imposed, the impugned notice was issued for closure of the mill, in the interest of public health. Thus, the first respondent prays to dismiss the writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue for the 1st respondent.

The learned counsel for the petitioner submitted that the action of the first respondent in straight away issuing the impugned notice for closure of the mill, without giving a show-cause notice and without affording opportunity of hearing to the petitioner, is illegal and arbitrary. He also submitted that since first respondent has no jurisdiction to issue such a notice, and the subject of granting permission to run the mill, vests with the Gram Panchayat as provided in Sections 124 and 125 of the A.P. Gram Panchayats Act, 1964, the impugned notice issued by the first respondent can be quashed. He further submitted that if really the second respondent Gram Panchayat has any objection for, or is aggrieved by the running of the mill, it could take appropriate action after conducting proper enquiry in that respect by giving an opportunity of hearing to the petitioner.

The second respondent-Gram Panchayat, having received notice of this writ petition, did not enter its appearance, and no counter-affidavit is filed on its behalf.

Inasmuch as under Section 126 of the A.P. Gram Panchayats Act, 1964, the power to order closing down of a mill for the reasons mentioned thereunder is exclusively vested in the Gram Panchayat, I am of the considered opinion that the Mandal Revenue Officer, has no power or jurisdiction to pass an order directing closing down of a mill, and therefore, the impugned order, passed by the 1st respondent, directing the petitioner to close down the mill, cannot be sustained and it is accordingly quashed and set aside. This order, however, does not preclude second respondent-Gram Panchayat, to take appropriate action against the mill, after conducting proper enquiry and giving a notice and opportunity of hearing to the petitioner, if it has any objection as to the running of the mill by the petitioner.

With the above directions, the writ petition is disposed of. No costs.

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N.V. RAMANA, J

Date: 10-11-2004

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To

1. The Mandal Revenue Officer-cum-Mandal Executive Magistrate, Vatsavai Village and Mandal, Krishna District.

2. The Sarpanch, Dabbakupalli Gram Panchayat,

Dabbakupalli, Vatsavai Mandal, Krishna District.

3. Two C.Cs. to the Government Pleader for Revenue, High Court Buildings, Hyderabad (OUT).

4. Two C.D. copies